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DEPARTMENT FOR EUR/SE

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TAGS: [PGOV](#) [PHUM](#) [TU](#)
SUBJECT: ELIF SAFAK ACQUITTED WHILE ARTICLE 301 REMAINS ON
TRIAL

REF: 05 ISTANBUL 2134

Classified By: Consul General Deborah K. Jones for reasons 1.4 (b) and
(d)

11. (C) Summary: The long anticipated trial of Elif Safak began and ended today with a prosecutor reluctantly recommending and a judge agreeing to acquit the renowned author of charges stemming from Turkey's controversial Article 301. Protesters remained out of view with extreme security measures in place at the Beyoglu 2nd Court of First Instance in Istanbul. Turkish-EU joint parliamentary committee chairman, Joost Lagendijk, noted the "absurdity" of the case and suggested that if Turkey reformed Article 301, the EU may be more willing to compromise on other issues such as customs disputes related to Cyprus. End summary.

THE DECISION

12. (SBU) We joined attorneys, representatives from international human rights organizations and Lagendijk, among others, in a packed courtroom for the trial of author Elif Safak, accused under Article 301 of the Turkish Penal Code of having insulted the Turkish state. The defendant, who gave birth to her first child five days ago, was absent from the proceedings. Her accuser, Kemal Kerincsiz, a nationalist lawyer who earned the world's attention by bringing Article 301 related charges against another famed Turkish author, Orhan Pamuk (see reftel) was the subject of much press attention upon arriving at the courthouse but, from what we could tell, was also not present in the courtroom. The trial began with nationalist lawyers heatedly arguing that Lagendijk's presence challenged the legal system and put pressure on judge Irfan Adil Uncu to rule in Safak's favor. As a result, the lawyers demanded the judge's recusal, which he promptly refused.

13. (SBU) The prosecutor immediately recommended that Safak be acquitted due to lack of evidence that she intended to insult the Turkish state. He argued that, looking at her book as a whole, it was clear she did not intend to insult Turkishness. He concluded there were no statements in the book which indicated that the comments made by fictional characters reflected Safak's opinion. (Note: The charges against Safak stemmed from dialogue between fictional characters in her novel, "The Bastard of Istanbul." End note.) Nationalist lawyers, seeing the writing on the wall, left the courtroom in protest before the judge rendered his decision to acquit Safak. Press later reported PM Erdogan was pleased with the decision, stating "these issues should be discussed with the Government and opposition since these laws are not here to stay forever."

SECURITY LESSONS LEARNED FROM PREVIOUS TRIALS

14. (SBU) Security at the courthouse was extremely tight with well over a hundred uniformed police, many in riot protection gear, flanking the entrance and alleys inside the compound. Armed security forces were visible on the bridge and roads above and behind the courthouse. Those who were present at the Pamuk trial--where protesters congregated en masse and threw eggs at the author--agreed that security was much better prepared for today's proceedings. Indeed, we did not see any protesters, though we were told that while we were inside the courtroom, a group of nationalists clashed with leftists outside the compound. Human rights NGO members also told us that they were asked by police at the compound entrance whether they were Safak supporters or protesters. Supporters, it seems, were welcome though they were not required to prove their allegiance.

EU OPINION--STRAIGHT FROM THE HORSE'S MOUTH

15. (C) We spoke to Lagendijk while we waited to enter the courtroom. He stated he has always had an interest in these cases but that this one was particularly "absurd" because it had to do with fictional characters. "It reminds me of Eastern Europe pre-1989," he explained to a reporter. We asked him whether in his opinion these cases were more important to Turkey's EU accession than international disputes over such issues as Cyprus. He responded that for EU politicians they were not/not but that for the EU public they were. The public, he argued, does not understand the

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complexities involved in the international disagreements but that these trials hit home and make the front pages of newspapers. He speculated that if the Government of Turkey (GOT) were to amend Article 301, the EU might be willing to show flexibility on other requirements.

16. (C) Comment: Safak's acquittal and PM Erdogan's comments following the decision are certainly positive developments which come at a critical time, with the EU now scheduled to release its annual report card on Turkish reforms November 8. The circumstances associated with this trial showcased on a world stage the "absurdity"--to use Lagendijk's description--of Article 301. At the same time, those who argue there is no need to change Article 301--GOT Justice Minister Cemil Cicek, for instance--will claim this decision proves that the penal code and the justice system work and that this decision, along with other decisions to acquit or suspend such cases, establishes the necessary precedent prosecutors and judges require to make fair decisions.
JONES